BEFORE THE THREE MEMBER DUE PROCESS PANEL
PURSUANT TO RSMo. 162.961

[redacted], et al.,)

Petitioner,)

v.)
Raymore-Peculiar R-II School District, et al.)

Respondents,)

I. PRETRIAL AGREEMENTS/STIPULATIONS

The record in this hearing opened at 8:40 am. on August 2, 2000 and the Petitioners, and on behalf of (hereinafter student) appear in person unrepresented by legal counsel and the school district by Jeffa Jessee the District's special education services coordinator/administrator, the school district also being represented by Ms. Terri Goldman, attorney for the district.

Petitioners called for the rule of sequestration of witnesses, which motion was granted and shall be in effect for the duration of this hearing. Petitioners called by their statutory authority that the hearing be closed to the public, so the hearing was closed to the public in its entirety.

Petitioners specifically framed one single issued they wished to be resolved in this hearing as: Is the specific assistive technology device in question (the talking calculator) necessarily included in student's IEP, if the student is to receive a free and appropriate public education? (The parents frame the issue as: Should a talking calculator be in student's IEP?) Conversely, since the district has decided (by their notice of action refused (Ex R-57)) this question in the negative, does this refusal to act constitute a failure to provide a FADE to student. The district concurred on the record to the narrowing of this inquiry per the petitioner's request and the panel unanimously agreed, upon the parties' mutual consent, to be bound as to the scope of the issue to be decided herein.

Petitioners moved and requested that the order of proof be altered so that the district form their case in chief first with the petitioner responding, but the panel overruled this motion.

The respondent moved the panel to decide/rule on the question of whether or not a FAPE is being given to student and was being given to student before and after the issue of the assistive technology device (talking calculator) arose.

II. EVIDENCE

Petitioners identified for the record and asked for admission into evidence respondent's Exhibit R-44, respondent's Exhibit R-47, respondent's Exhibit R-51, respondent's Exhibit R-54, respondent's Exhibit R-57, and respondent's Exhibit R 10 (pages 74 through 78 only), which were all admitted to the record without objection by the district.

Respondent identified for the record and moved to be admitted into evidence all remaining respondent's Exhibits through 64 which had not already been entered into evidence in the petitioner's case. The petitioners objected to said blanket admission on the grounds that all of such records were not relevant to the narrow issue and specific inquiry being conducted by this panel. Respondents countered that each and every record contained in respondent's exhibit book Exhibits 1 through 64 were business records created in the normal course of respondent's operation and not for the purpose of appearing at trial, and therefore were admissible under the business records exception under Missouri state law. The decision was made by the panel that the relevancy of these exhibits would go to the weight versus the sufficiency of these exhibits. Therefore, the objections of the petitioners in this regard were overruled and all of respondent's exhibit book 1 through 64 was admitted into evidence in this matter.

The witnesses in this hearing by order of appearance were as follows:

Petitioner's case

1. Verleen Kling (Process administrator for district)
2. Kathy Keeble (Special Ed (2 year) teacher of student)
3. Paula Mosher (Principal at Stonegate Elementary student's current elementary school)
4. (Mother of student)

Respondent's case

1. Brandy Lynn Honn (*for petitioner and respondent's case in chief) (current special education teacher, classroom within classroom teacher, and resource teacher for student)

After the testimony of Ms. petitioners closed their case in chief reserving the right to offer closing arguments and reserving the right to examine Brandy Lynn Honn as part of their case in chief after she was examined by the respondents. The chairperson inquired of the petitioners if they had anything further to present to this panel regarding the issue being decided and the response was negative.

After the testimony of Brandy Lynn Honn the districted closed its case in chief reserving the right to offer closing arguments, and after being asked by the panel chair if they had any further evidence to present to the panel regarding the issue in question, they answered that they did not.

After closing arguments by both patties, respondents offered the stipulation that regardless of the decision rendered herein, they would not oppose the right of the petitioners to request an independent assistive technology evaluation, which right would

accrue regardless of the state of completion of the district's assistive technology evaluation, not later than August 17, 2000. As of August 17, 2000 upon petitioner's request for an independent evaluation of assistive technology, respondent could choose either to grant said independent evaluation and pay for the same or to contest the independent evaluation by the parents through due process at the request of the district. In the event the district chooses to go through due process over the parent's independent evaluation, then in that case the petitioners could immediately obtain an independent evaluation at their own expense, and put the reimbursement of expenses for their independent evaluation into issue at the district's pending due process request.

This stipulation was accepted by the panel unanimously and is hereby and will by following language of this decision be made part hereof and enforceable as such.

III. FINDINGS OF FACT

1. Student is educationally diagnosed as learning disabled and such diagnosis originated on or about February 9, 1995. (TR. 60, L. 2-6; TR 59, L. 4-8; TR. 62, L. 9-11; TR 63, L. 10-13; Ex. R-3, p. 29).
2. Petitioners, on behalf of student, filed the due process request hereunder on or about June 1, 2000. Thereafter, the date for hearing was set by the chairperson for July 6th & 7th, 2000 with the decision deadline under those settings for July 17th. Thereafter respondent district requested a continuance, by letter dated June 22, 2000 to move the hearing back to August 2nd through 4th with the decisional deadline reset to September 15th, 2000. The continuance was granted to these dates by letter of the chair posted to all parties concerned on or about June 26th, 2000. (Administrative Notice, Chairperson's personal file).
3. Petitioners attempted to request that an assistive technology evaluation be conducted by the school on the student as of September, 1999. (R-36, p. 169).
4. In all of the evidence adduced at hearing, there was no substantial evidence presented that the student had not received a FAPE at all times relevant to this proceeding from the respondent school district.
5. Substantial evidence was adduced on the record that student had received substantial educational benefit throughout his tenure at respondent school district, without using the assistive technology device (talking calculator) at issue in this hearing. (TR 71, L. 17-25; TR 72, L. 1; TR 201, L. 13-25; TR 202, L. 1-25; TR 203, L. 1-7; TR 236, L. 25; TR 237, L. 1-7; TR 53, L. 1-25; TR 54, L. 1-10; TR 67, L. 1-4; TR 84, L. I 1-17).
6. In all evidence adduced at the hearing there was no substantial evidence to support the proposition that the student required the assistive technology device (talking calculator) to derive substantial educational benefit from his IEP and curriculum at respondent district.

IV. DECISION

It is the decision of this panel that there is insufficient evidence upon the record to find that the talking calculator assistive technology device is or was necessary in order to provide substantial educational benefit to student, hence a free and appropriate public education to student, under the student's IEP at Respondent district. It is therefore

ordered and decided by this panel that the parent's request that we direct the district to add to the IEP of the student the assistive technology device in question, is denied.

Pursuant to the stipulation of the district, the parents' right to request an independent Assistive Technology Evaluation accrued on August 17, 2000. The district shall continue to conduct its assistive technology evaluation now in progress.

No attorney's fees or expenses shall be allowed to either party in this matter and each party shall go hence together with their costs and expenses incurred herein.

David Potashnick
Panel Chairperson
7095 E. Farm Rd. 170
Rogersville, MO 65742
(417) 889-0919

Date

Jerry Wright
Panel Member
222 W. 2nd
Maryville, MO 64468
(660) 582-4578

Date

Jeanie Adams
Panel Member
4002 Ridge Avenue
St. Peters, MO 63376
(636) 826-8012

Date